

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-480

June 20, 2000

SMARTENERGY.COM, INC.
Application for License to Operate as a
Competitive Electricity Provider

ORDER GRANTING LICENSE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we license SmartEnergy.Com, Inc. to operate as a competitive electricity provider in Maine pursuant to Chapter 305 of the Commission's Rules.

II. APPLICATION

On June 2, 2000, SmartEnergy.Com, Inc. (SmartEnergy) applied to the Commission for a license to operate in Maine as a competitive electricity provider, as provided in Chapter 305. On June 6, 2000, SmartEnergy filed additional information to supplement its earlier filing.

A. Type of Service Proposed

SmartEnergy proposes to sell electric service to the public at retail as a competitive electricity provider. SmartEnergy's application states that the proposed licensee plans to market electricity to residential and commercial customers in the transmission and distribution utility service territories of Bangor Hydro-Electric Company, Central Maine Power Company, and Maine Public Service Company, enrolling customers via SmartEnergy's website.

B. Fee Paid

With its application, SmartEnergy paid a \$100 fee to the Commission, as required by section 2(C)(5) of Chapter 305.

III. FINANCIAL ISSUES

A. Security

Section 2(B)(1)(a)(i) of Chapter 305 states that “a license will not be issued or remain in force until the applicant or licensee furnishes a surety bond or letter of credit” meeting the requirements of that rule. The initial security level is set by section 2(B)(1)(a)(ii) as \$100,000.

SmartEnergy has furnished a surety bond in the amount of \$100,000 as its security instrument, with supporting materials as required by section 2(B)(1)(a)(iv) of Chapter 305. We have reviewed that instrument and find that it conforms to the requirements of Chapter 305.

B. Showing of Professional and Financial Capability

We find that the security instrument provided by SmartEnergy as described above demonstrates that SmartEnergy has the financial capability to engage in its proposed business as a competitive electricity provider in Maine.

IV. TECHNICAL ISSUES

A. Showing of Technical Capability

SmartEnergy, as a competitive electricity provider in Maine, must demonstrate it has the technical ability to enter necessary interconnection arrangements or contracts with Maine utilities, pursuant to section 2(B)(2)(a) of Chapter 305. In its application, SmartEnergy provided information demonstrating its ability to enter into such arrangements or contracts, although it stated it had not yet reached such agreements. Accordingly, SmartEnergy shall not act to enroll consumers or provide generation service until all required contracts have been executed consistent with Commission rules. SmartEnergy shall notify the Commission when all such contracts have been executed.

Section 2(B)(2)(b) of Chapter 305 requires an applicant to demonstrate that it has the technical ability to secure generation or otherwise obtain and deliver electricity meeting all applicable requirements for the bulk power system control area in which the applicant would provide service. SmartEnergy filed information to demonstrate its technical capability to meet that requirement within the NEPOOL/ISO-NE and Maritimes portions of the Northeast Power Coordinating Council control area. We have reviewed that information and find that it complies with the requirements of Chapter 305. SmartEnergy also documented that it will meet the NEPOOL transaction provisions required by section 2(B)(2)(b)(ii) of Chapter 305.

B. Resource Portfolio

SmartEnergy, as a competitive electricity provider in Maine, pursuant to section 2(B)(4) of Chapter 305, must demonstrate its ability to meet the resource portfolio requirement of 35-A M.R.S.A. § 3210 and the portfolio requirement reporting rules in Chapter 311 of the Commission's rules. SmartEnergy filed information to demonstrate its ability to meet these requirements. We have reviewed that information and find that it complies with the requirements of Chapter 305.

V. CONSUMER PROTECTION ISSUES

A. Showing of Fitness

In its application, SmartEnergy provided information required by Chapter 305 section 2(B)(3) related to enforcement proceedings and consumer complaints. We have reviewed that information and find that it meets the requirements of Chapter 305.

B. Ability to Comply with Consumer Protection Rules

SmartEnergy provided information demonstrating its ability to comply with the applicable consumer protection requirements of Chapter 305 and other consumer protection requirements pursuant to 35-A M.R.S.A. Chapter 32 and other relevant provisions of Maine law. We have reviewed that information and find that it meets the requirements of Chapter 305.

C. Do-Not-Call List

Chapter 305 section 4(I) states that "[t]he Commission will maintain or cause to be maintained a 'Do-Not-Call' list of customers who have requested -- orally, in writing, or by commercially accepted electronic means -- that they not receive telemarketing calls from competitive electricity providers." We require that licensees use do-not-call list mechanisms already in place nationally to satisfy that requirement. To the extent that it telemarkets to Maine consumers, SmartEnergy shall comply with the following requirements.

SmartEnergy must comply with the requirements of the Telephone Consumer Protection Act,¹ the Telemarketing and Consumer Fraud and Abuse Prevention Act,² and related rules of the Federal Communications Commission³ and Federal Trade Commission.⁴ SmartEnergy must comply with those requirements and must maintain its own do-not-call list as required by those laws and rules, for all intrastate and interstate telemarketing of Maine consumers, including both residential and business consumers. SmartEnergy shall not telemarket to Maine consumers on

¹47 U.S.C. § 227

²15 U.S.C. §§ 6101-6108

³47 CFR 64.1200

⁴FTC Telemarketing Sales Rule, 16 CFR Part 310

that list, as required in Chapter 305 section 4(l)(1). SmartEnergy shall update its do-not-call list at least monthly, and maintain copies of that list for at least six months. SmartEnergy shall provide a copy of that list to the Commission upon request.

Further, each month, SmartEnergy must obtain listings of Maine consumers who have arranged to be included on the do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc.⁵ SmartEnergy shall not telemarket to Maine consumers on that list, as required in Chapter 305 section 4(l)(1).

D. Other Consumer Protections

An Act Relating to Electric Industry Restructuring, P.L. 1999, ch. 657, § 19, requires that competitive electricity providers, as a condition of licensing, provide certain protections to consumers. Pursuant to that Act, SmartEnergy:

1. Shall obtain a consumer's authorization before serving the consumer;
2. May not release to any other entity, other than for purposes of debt collection or credit reporting pursuant to state and federal law or to law enforcement agencies pursuant to lawful process, any personal information regarding a customer, including name, address, telephone number, usage and historical payment information, without the consent of the customer;
3. Must comply with the provisions of the Maine Unfair Trade Practices Act, Title 5, chapter 10;
4. May not collect or seek to collect unreasonable costs from a customer who is in default;
5. Must comply with all applicable provisions of the federal Equal Credit Opportunity Act, 15 United States Code, Sections 1691 to 1691f;
6. May not initiate a telephone solicitation call to a consumer who has notified the competitive electricity provider of the consumer's wish not to receive telephone solicitation calls made by or on behalf of the competitive electricity provider;
7. Must provide at least once annually to a customer any information disclosures required by the Commission by rule; and
8. Must comply with any other applicable standards or requirements established by the Commission by rule.

SmartEnergy seeks authority to operate as a competitive electricity provider serving residential consumers and small commercial consumers in Maine. In

⁵Telephone Preference Service, Direct Marketing Association, Inc., P.O. Box 9014, Farmingdale, NY 11735-9014

addition to the requirements stated above, pursuant to An Act Related to Electric Industry Restructuring, P.L. 1999, ch. 657, § 18, SmartEnergy, as a condition of licensing:

1. May not terminate generation service without at least 30-day prior notice to the consumer;
2. Must offer service to the consumer for a minimum period of 30 days;
3. Must allow the consumer to rescind selection of the competitive electricity provider orally or in writing within 5 days of initial selection;
4. May not telemarket services to the consumer if the consumer has filed with the Commission a written request not to receive telemarketing from competitive electricity providers;
5. Must provide to the consumer within 30 days of contracting for retail service a disclosure of information provided to the Commission pursuant to rule in a standard written format established by the Commission; and
6. Must comply with any other applicable standards or requirements adopted by the Commission by rule or order.

VI. ADDITIONAL PROVISIONS

SmartEnergy must comply with all applicable requirements and limitations in Chapter 305 not explicitly waived in this Order. SmartEnergy must also comply with all requirements and limitations in other applicable Commission rules, including any applicable future changes in Maine laws and Commission rules, and in other parts of this Order.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. license SmartEnergy.Com, Inc. to operate as a competitive electricity provider pursuant to Chapter 305 of the Commission's Rules, to offer retail service to all consumers in the service territories of Bangor Hydro-Electric Company, Central Maine Power Company, and Maine Public Service Company in Maine;
2. order SmartEnergy.Com, Inc. to comply with all Do-Not-Call List requirements contained in Part V(C) of this Order to the extent that it telemarkets to Maine consumers;
3. order SmartEnergy.Com, Inc. to observe all other consumer protection requirements contained in Part V(D) of this Order; and

4. order that this license is effective on the date of this Order and valid until revoked by the Commission pursuant to section 3(A)(4) of Chapter 305, or abandoned by the licensee pursuant to sections 2(C)(9) and 2(C)(11) of Chapter 305 of the Commission's Rules.

Dated at Augusta, Maine, this 20th day of June, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.